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HOUSE BILL 1101

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO ENVIRONMENTAL IMPROVEMENT; CREATING GUIDELINES FOR
REGULATIONS AND STANDARDS ADOPTED BY THE ENVIRONMENTAL
IMPROVEMENT BOARD AND THE WATER QUALITY CONTROL COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-1-8 NMSA 1978 (being Laws 1971,
Chapter 277, Section 11, as amended) is amended to read:

"74-1-8. ENVIRONMENTAL IMPROVEMENT BOARD--DUTIES.--

A. The board is responsible for environmental
management and consumer protection. In that respect, the board
shall promulgate regulations and standards in the following
areas:

(1) food protection;

(2) water supply, including regulations

establishing a reasonable system of fees for the provision of

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1 services by the agency to public water supply systems;
2 (3) liquid waste;
3 (4) air quality management as provided in the
4 Air Quality Control Act;
5 (5) radiation control as provided in the
6 Radiation Protection Act;
7 (6) noise control;
8 (7) nuisance abatement;
9 (8) vector control;
10 (9) occupational health and safety as provided
11 in the Occupational Health and Safety Act;
12 (10) sanitation of public swimming pools and
13 public baths;
14 (11) plumbing, drainage, ventilation and
15 sanitation of public buildings in the interest of public health;
16 (12) medical radiation, health and safety
17 certification and standards for radiologic technologists as
18 provided in the Medical Radiation Health and Safety Act;
19 (13) hazardous wastes and underground storage
20 tanks as provided in the Hazardous Waste Act; and
21 (14) solid waste as provided in the Solid Waste
22 Act.

23 B. Nothing in Subsection A of this section imposes
24 requirements for the approval of subdivision plats in addition
25 to those required elsewhere by law. Nothing in Subsection A of

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1 this section preempts the authority of any political subdivision
2 to approve subdivision plats.

3 C. Fees collected pursuant to Paragraph (2) of
4 Subsection A of this section shall be deposited in the water
5 supply fund.

6 D. No state regulation or standard promulgated
7 pursuant to Paragraph (2), (3), (4), (13) or (14) of Subsection
8 A of this section that is more stringent than a federal mandate
9 or more stringent than an existing state regulation or standard
10 or new state regulation or standard promulgated under state
11 authority shall be adopted unless the following are completed:

12 (1) an assessment showing the risk to public
13 health and the environment of not implementing or adopting the
14 proposed regulation or standard; and

15 (2) a technically based review ensuring that
16 the regulation or standard has a sound scientific basis."

17 Section 2. Section 74-6-4 NMSA 1978 (being Laws 1967,
18 Chapter 190, Section 4, as amended) is amended to read:

19 "74-6-4. DUTIES AND POWERS OF COMMISSION. -- The commission:

20 A. may accept and supervise the administration of
21 loans and grants from the federal government and from other
22 sources, public or private, which loans and grants shall not be
23 expended for other than the purposes for which provided;

24 B. shall adopt a comprehensive water quality
25 management program and develop a continuing planning process;

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1 C. shall adopt water quality standards for surface
2 and ground waters of the state subject to the Water Quality Act.
3 The standards shall include narrative standards and as
4 appropriate, the designated uses of the waters and the water
5 quality criteria necessary to protect such uses. The standards
6 shall at a minimum protect the public health or welfare, enhance
7 the quality of water and serve the purposes of the Water Quality
8 Act. In making standards, the commission shall give weight it
9 deems appropriate to all facts and circumstances, including:

10 (1) the use and value of the water for water
11 supplies, propagation of fish and wildlife, recreational
12 purposes and agricultural, industrial and other purposes;

13 (2) character and degree of injury to or
14 interference with health, welfare, environment and property;

15 (3) the public interest, including the social
16 value of the sources of water contaminants;

17 (4) technical practicability of reducing or
18 eliminating water contaminants from the sources involved and
19 previous experience with equipment and methods available to
20 control the water contaminants involved;

21 (5) successive uses, including domestic,
22 commercial, industrial, pastoral, agricultural, wildlife and
23 recreational uses;

24 (6) property rights and accustomed uses; and

25 (7) federal water quality requirements;

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1 D. shall adopt, promulgate and publish regulations
2 to prevent or abate water pollution in the state or in any
3 specific geographic area, aquifer or watershed of the state or
4 in any part thereof, or for any class of waters, and to govern
5 the disposal of septage and sludge and the use of sludge for
6 various beneficial purposes. The regulations governing the
7 disposal of septage and sludge may include the use of tracking
8 and permitting systems or other reasonable means necessary to
9 assure that septage and sludge are designated for disposal in,
10 and arrive at, disposal facilities, other than facilities on the
11 premises where the septage and sludge is generated, for which a
12 permit or other authorization has been issued pursuant to the
13 federal act or the Water Quality Act. Regulations shall not
14 specify the method to be used to prevent or abate water
15 pollution but may specify a standard of performance for new
16 sources that reflects the greatest reduction in the
17 concentration of water contaminants that the commission
18 determines to be achievable through application of the best
19 available demonstrated control technology, processes, operating
20 methods or other alternatives, including where practicable a
21 standard permitting no discharge of pollutants. In making
22 regulations, the commission shall give weight it deems
23 appropriate to all relevant facts and circumstances, including:
24 (1) character and degree of injury to or
25 interference with health, welfare, environment and property;

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1 (2) the public interest, including the social
2 and economic value of the sources of water contaminants;

3 (3) technical practicability and economic
4 reasonableness of reducing or eliminating water contaminants
5 from the sources involved and previous experience with equipment
6 and methods available to control the water contaminants
7 involved;

8 (4) successive uses, including but not limited
9 to domestic, commercial, industrial, pastoral, agricultural,
10 wildlife and recreational uses;

11 (5) feasibility of a user or a subsequent user
12 treating the water before a subsequent use;

13 (6) property rights and accustomed uses; and

14 (7) federal water quality requirements;

15 E. shall assign responsibility for administering its
16 regulations to constituent agencies so as to assure adequate
17 coverage and prevent duplication of effort. To this end, the
18 commission may make such classification of waters and sources of
19 water contaminants as will facilitate the assignment of
20 administrative responsibilities to constituent agencies. The
21 commission shall also hear and decide disputes between
22 constituent agencies as to jurisdiction concerning any matters
23 within the purpose of the Water Quality Act. In assigning
24 responsibilities to constituent agencies, the commission shall
25 give priority to the primary interests of the constituent

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1 agencies. The department of environment shall provide technical
2 services, including certification of permits pursuant to the
3 federal act;

4 F. may enter into or authorize constituent agencies
5 to enter into agreements with the federal government or other
6 state governments for purposes consistent with the Water Quality
7 Act and receive and allocate to constituent agencies funds made
8 available to the commission;

9 G. may grant an individual variance from any
10 regulation of the commission whenever it is found that
11 compliance with the regulation will impose an unreasonable
12 burden upon any lawful business, occupation or activity. The
13 commission may only grant a variance conditioned upon a person
14 effecting a particular abatement of water pollution within a
15 reasonable period of time. Any variance shall be granted for
16 the period of time specified by the commission. The commission
17 shall adopt regulations specifying the procedure under which
18 variances may be sought, which regulations shall provide for the
19 holding of a public hearing before any variance may be granted;

20 H. may adopt regulations to require the filing with
21 it or a constituent agency of proposed plans and specifications
22 for the construction and operation of new sewer systems,
23 treatment works or sewerage systems or extensions, modifications
24 of or additions to new or existing sewer systems, treatment
25 works or sewerage systems. Filing with and approval by the

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1 federal housing administration of plans for an extension to an
2 existing or construction of a new sewerage system intended to
3 serve a subdivision solely residential in nature shall be deemed
4 compliance with all provisions of this subsection;

5 I. may adopt regulations requiring notice to it or a
6 constituent agency of intent to introduce or allow the
7 introduction of water contaminants into waters of the state;

8 J. may adopt regulations establishing pretreatment
9 standards that prohibit or control the introduction into
10 publicly owned sewerage systems of water contaminants that are
11 not susceptible to treatment by the treatment works or that
12 would interfere with the operation of the treatment works;

13 K. shall not require a permit respecting the use of
14 water in irrigated agriculture, except in the case of the
15 employment of a specific practice in connection with such
16 irrigation that documentation or actual case history has shown
17 to be hazardous to public health or the environment; ~~and~~

18 L. shall coordinate application procedures and
19 funding cycles for loans and grants from the federal government
20 and from other sources, public or private, with the local
21 government division of the department of finance and
22 administration pursuant to the New Mexico Community Assistance
23 Act; and

24 M shall not adopt state regulations or standards
25 promulgated pursuant to this section that are more stringent

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1 than a federal mandate or water quality criteria levels
2 established by the federal environmental protection agency or
3 more stringent than an existing state regulation or standard or
4 new state regulation or standard promulgated under state
5 authority, unless the following are completed:

6 (1) an assessment showing the risk to public
7 health and the environment of not implementing or adopting the
8 proposed regulation or standard; and

9 (2) a technically based review ensuring the
10 regulation or standard has a sound scientific basis."